

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Number: 100.9400 Proposed Action: Amendment
- 4) Statutory Authority: 35 ILCS 5/909
- 5) A Complete Description of the Subjects and Issues Involved: IITA Section 909(b) authorizes the Department to adopt regulations allowing taxpayers who report an overpayment on their returns to elect to apply that overpayment against their liability to pay estimated taxes in the subsequent year. The Department has done so in 86 Ill. Admin. Code Section 100.9400(b). IITA Section 909(a) allows the Department to offset an overpayment against any outstanding income tax liability of the taxpayer. In the past, when the Department has exercised this authority in situations where the taxpayer has elected to apply the overpayment against its estimated tax liability, taxpayers have found themselves subject to penalty for underpayment of estimated tax. To avoid these problems in the future, this rulemaking amends 86 Ill. Admin. Code Section 100.9400(b) to provide that, if the Department applies some or all of the reported overpayment against another liability, it will notify the taxpayer and no underpayment penalty will be imposed if the taxpayer makes up the resulting shortfall in its estimated tax payments within a grace period after the notice is sent to the taxpayer.
- 6) Will this proposed amendment replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>IL Register Citation</u>
100.2140	Amendment	29 Ill. Reg. 2988, 02/25/05
100.2150	Amendment	29 Ill. Reg. 2988, 02/25/05
100.2330	Amendment	29 Ill. Reg. 2988, 02/25/05

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Paul Caselton
Deputy General Counsel - Income Tax
Illinois Department of Revenue
Legal Services Office

101 West Jefferson
Springfield, Illinois 62794

(217) 782-7055

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking does not affect municipalities. Small businesses and not-for-profit corporations that have large enough income tax liabilities to be required to make estimated tax payments will benefit from receiving formal notification when the Department offsets an overpayment that the taxpayer has elected to apply against its liability to pay estimated taxes against another liability and from the grace period allowed to avoid penalties for underpayment of estimated tax.
- B) Reporting, bookkeeping or other procedures required for compliance: None.
- C) Types of professional skills necessary for compliance: None.

13) Regulatory Agenda on which this rulemaking was summarized: July 2005

The full text of the Proposed Amendment begins here:

SUBPART Y: CREDITS AND REFUNDS

Section 100.9400 Credits and Refunds (IITA Section 909)

- a) In general. The Department may credit the amount of any overpayment including interest allowed thereon against any liability for tax imposed under the IITA or any other Act administered by the Department on the person who made the overpayment, and it shall refund the balance to such person. (See Section 39e of the Civil Adm. Code of Illinois, Ill. Rev. Stat. 1991, ch. 127 par. 39e) [20 ILCS 2502/39e].
- b) Credit against estimated tax. A taxpayer may elect to have any portion of any overpayment shown on a timely original return applied against the taxpayer's estimated tax liability for the taxable year immediately following the taxable year for which the return is filed. IITA Section 909(b). Such election shall be made on the form prescribed by the Department and, once made, shall be irrevocable. After an election is properly made and before the return for the immediately following taxable year is filed, the Department may apply the amount of the overpayment against other liabilities of the taxpayer, and apply only the balance (if any) of the overpayment against the taxpayer's estimated tax liability. See IITA Section 909(a) and Section 2505-275 of the Department of Revenue Law (20 ILCS 2505/2505-275). If the Department applies a portion of an overpayment against a liability other than the estimated tax liability for the immediately following taxable year, the Department shall issue a notice to the taxpayer stating the amount so applied and the liability against which the application was made, and no penalty for late payment of estimated taxes under IITA Section 804(a) or for underpayment of tax under IITA Section 1005(a) shall accrue with respect to the amount so applied if the full amount of the liability that was due as of the date such notice was issued is paid prior to the later of:

- 1) the date which is 30 days after the date such notice is issued; or
- 2) the unextended due date of the return for the year for which the estimated tax credit was requested or, in the case of the penalty for late payment of estimated taxes, the due date of the next estimated tax installment (if any) due after the date of the notice.

~~An individual or corporate taxpayer by filing a return for the taxable year using the appropriate form and checking the appropriate box thereon in accord with the instructions shall have the amount of any overpayment or portion thereof credited thereafter against his estimated tax liability for the next succeeding taxable year.~~

c) Interest on overpayments.

- 1) General rule. Subject to the provisions of this paragraph interest shall be allowed and paid upon any overpayment in respect of the tax imposed by the Act at a rate determined by reference to IITA Section 909(c). Where there is a dispute between a taxpayer and the Department regarding the amount of interest that is due, see 86 Ill. Adm. Code 100.9400(f)(6).
- 2) Overpayments. The overpayment in respect of any tax imposed by the Act includes any penalties assessed under IITA Section 1002(e), any interest assessed on tax or on penalty under IITA Section 1003. For this purpose, an overpayment is any creditable or refundable portion of taxes, penalty, or interest which was previously paid.
- 3) Date of overpayment.
 - A) The date of overpayment is the date of payment of any tax which thereafter becomes or is determined to be refundable or creditable for the taxable year, except as provided in subsection (B). There can be no overpayment of tax prior to the last prescribed for filing the return, nor until the entire tax liability for the taxable year is satisfied, nor until the return is filed for the taxable year. Therefore, the date or dates of overpayment are the date of payment of the first amount which (when added to previous payments) exceeds the tax liability (including any interest or penalties) for the taxable year and the date or dates of any subsequent payment(s) made with respect to such tax liability, which in any event cannot be earlier than the last day prescribed for filing the return for the year, nor earlier than the date the return is filed. The "last day prescribed for filing the return" for purposes of this subsection and subsection (d) is the original due date, not the extended due date, if any.
 - B) In the case of a federal change due to the final allowance of a carryback from a loss year ending prior to December 31, 1986, under the provisions of the federal Internal Revenue Code, the date of overpayment shall be as of the close of the taxable year in which the deduction, losses, or other item or event occurred which created the federal carryback, or the date when the return for the carryback year is filed, which ever is later.
 - C) In the case of a federal change due to the final allowance of a carryback or carryforward from a loss year ending on or after December 31, 1986, and in the case of an Illinois change due to the carryforward or carryback

of an Illinois net loss, Illinois investment credit, jobs credit, replacement tax credit, or other credit (other than estimated or tentative tax credit) from a loss or credit year ending on or after December 31, 1986, the date of the overpayment shall be the date the claim for refund is filed, except that if any overpayment is refunded within 3 months of the date the claim for refund is filed, determined without regard to processing by the Comptroller, no interest shall be allowed on such overpayment.

- D) Beginning January 1, 1994, *if a claim for refund relates to an overpayment attributable to a net loss carryback as provided by Section 207 of the Illinois Income Tax Act, the date of overpayment shall be the last day of the taxable year in which the loss was incurred.* (see Section 3-2(d) of the Uniform Penalty and Interest Act)

d) Period for which interest is allowable.

1) In general.

- A) Prior to January 1 1994, interest shall be allowed and paid from the date of overpayment to a date determined by the Director or his delegate, which shall not be more than 30 days prior to the date of any refund or credit. However, no interest shall be allowed on the amount of tax overpaid if such amount is refunded or credited within the later of three months after the last date prescribed for filing the return of such tax or within three months after the return was filed, determined without regard to processing by the Comptroller.
- B) On and after January 1, 1994 interest shall be allowed and paid in the manner prescribed under the UPIA.

- 2) Estimated tax for succeeding year. Notwithstanding any other provision of this section, if a taxpayer elects on his return for the taxable year to have all or part of any overpayment shown on such return applied as an estimated tax payment for the succeeding taxable year, no interest shall be allowed on such portion of the overpayment so credited and such amount shall be applied as a payment on account of the estimated tax for such succeeding year or the installments thereof.

e) Examples. This Section may be illustrated by the following examples:

- 1) Example 1: T, a calendar year taxpayer, receives an extension to June 30, 1972, to file his 1971 return. On April 15, 1972, T files an tentative return pursuant to IITA Section 602(a) showing an estimated liability of \$500 which has been paid through withholding, estimated tax payments, or as a payment with the tentative return of the tax properly estimated to be due. On June 15, 1972, T files his 1971 return showing a tax liability of \$3,000 including interest for late payment and remits \$2,500 which in addition to the \$500 paid as indicated satisfies the liability shown on his return. On August 15, 1972, T files a claim for refund for \$1,500 as a overpayment of 1971 tax. The date of overpayment for the computation of any interest thereon would be June 15 which is the date when payments first exceeded his liability as now shown as a result of his claim for refund, and which is the date when the return for the taxable year was first filed. See example 2 for application for the 3 month rule.

- 2) Example 2: Assume the same facts as in Example (1) and that T's refund claim of \$1,500 was allowed and paid on September 1. No interest would be allowed because the refund was made within 3 months of June 15, the date the return for the taxable year was filed. If the refund was made on October 1, interest would be allowed from June 15 to a date which would be not more than 30 days prior to October 1.
- 3) Example 3: W, a calendar year taxpayer, files his return on March 7 and claims a refund as a result of excess withholding. The refund is made July 1. No interest would be allowed for the refund was made within 3 months after April 15, which is the later of the last day prescribed for filing the return or the date the return was filed. If with the same facts the refund is made July 28, interest would be allowed from April 15 (the date of overpayment).
- 4) Example 4: X, a calendar year corporation, sustains a federal net operating loss in 1973. X files a federal claim for refund, carrying the loss back to 1970 and receives a refund of federal taxes for 1970 based on the net operating loss carryback ~~carry-back~~. (Refer to subsection (f)(4), below respecting a federal application for tentative carryback adjustment.) X then files Form IL-1120X claiming an overpayment of 1970 Illinois tax as a result of a federal change in its reported taxable income for 1970. The date of overpayment would be December 31, 1973, the close of the taxable year in which the federal net operating loss occurred (provided an original 1970 IL-1120 had been filed by this date).

f) Refund claim.

- 1) In general. A claim for refund of an overpayment of income tax may be filed with the Department only if a return for the taxable year for which the refund is claimed has been filed. Although a timely return may have the effect of a claim for refund of tax over payment (due to excess withholding or payment under Articles 7 or 8 of the Act) it does not constitute a claim for refund under IITA Section 909(d) and (e) of the Act calling for consideration. A separate claim shall be filed for each taxable year for which an income tax overpayment was made. Every claim for refund shall be in writing, shall be on the appropriate form prescribed by the Department, and (using attachments if necessary) shall state the specific grounds upon which it is founded.
- 2) Evidence of claim filing. In preparing and filing a claim on either an amended return before the return due date, or after such date has passed on Form IL-843, Form IL-1040X, or Form IL-1120X, a taxpayer may attach two photocopies of page 1 of the original executed claim being filed as a pro form a claim receipt form identifying the claim with a written request that one photocopy be returned to the claimant as a receipt. Upon the Department's receiving the claim and the two photocopies of page 1 thereof if attached, the Director's designee shall place there on the Department's Date Received Stamp and sign in ink his initials therein, after which one photocopy shall be removed and mailed to the claimant for his use as a receipt. In absence of a photocopy of the claim form (so stamped and initialed) being attached to the original claim or being produced by the claimant, copies of the Department's records certified true by the Director or his designee shall be deemed prima facie correct to show whether or not a claim was filed and if so the date upon which it was received by the Department.

Furthermore, the Department's records as to the date that the claim was date received in the Department's mail room shall be prima facie evidence that the postmark date on the claim was ten days prior to that date.

- 3) Amended return as claim; limited use. In an instance where a return for the taxable year is filed early, the latest received by the Department of any further return or amended return filed by the taxpayer on or before the last day prescribed for timely filing shall constitute and be accepted as his return for the taxable year. Therefore, if a return showing a tax liability for the taxable year has been filed with the Department and the tax paid and the due date prescribed for filing that return has not passed, any claim for refund filed prior to that date shall be made by the filing of a further return marked "CORRECTED", showing the amount of the tax overpayment to be refundable. Form IL-1040X and Form IL-1120X shall be used for this purpose by individuals and corporations.
- 4) Claim form; federal change. If, on the other hand, the due date for filing a return has passed and under the Act an overpayment based on a federal change has arisen, in addition to meeting the requirements of IITA Section 506 a claim for refund based on such change should be made by the filing (following the instructions thereon) of a notice of such change on Illinois Form IL-843, Form IL-1040X, or Form IL-1120X, as appropriate. To meet the requirements of IITA Section 909(d) for stating specific grounds, there should be within the Form or on an attachment an explanation in detail sufficient to show the nature of the items of change or alteration. If helpful or otherwise appropriate to show the grounds and to compute the amount claimed as refundable, another return marked "AMENDED" may be attached or filed in connection with the Form IL-843. Further, where a claim for refund is filed based on a federal change giving rise to an overpayment, documentation in form of the original federal documents or correspondence furnished the taxpayer or other satisfactory proof in connection with the change (or true and correct fully legible photocopies thereof) shall be attached evidencing that such federal change, represents an agreed to or final federal Internal Revenue Service (or court imposed) acceptance, recomputation, redetermination, change, tentative carryback adjustment or settlement; and it shall be stated or shown that no contest thereof is pending. In this connection, the payment received as the result of the filing of an application for a tentative carryback adjustment (on Form 1045 or Form 1139) pursuant to 26 U.S.C. 6411 is a change reportable under IITA Section 506. A claim for refund of an overpayment of Illinois income tax occasioned by the payment of a tentative carryback adjustment may be filed on Form IL-1040X and Form IL-1120X. A premature or incomplete claim on Form IL-843, Form IL-1040X, or Form IL-1120X shall not constitute a claim for refund within the meaning IITA Section 909(d), nor for purposes of commencing the 6-month period in subsection (g) below. Upon any claim being received and identified as premature, incomplete, or otherwise defective under the Act, the Department as soon as practicable shall notify the taxpayer thereof in writing to enable if possible the timely submission of a mature and perfected claim.
- 5) Claim form; no federal change. If a return showing tax due for the taxable year has been filed and the tax paid and an overpayment based on a purely Illinois change has arisen and not based to any extent on a change in federal income tax liability, any claim for refund should be made by the filing (following the instructions thereon) of Illinois Form IL-843, Form IL-1040X (individuals), or Form

IL-1120X (corporations), as appropriate, using if necessary an attachment to set forth in detail each specific ground for refund, and if appropriate another return marked "AMENDED" may be attached to or filed in connection with the Form IL-843. Pertaining to purely Illinois changes, Forms IL-843, IL-1040X and IL-1120X are designed for use not only to claim a refund of tax overpayment but also to report an increase in the amount of previously reported or determined income tax liability for the taxable year.

- 6) Informal claim not permitted; disputes regarding the amount of interest due. In all cases where the original return due date has passed, claims for refund shall be filed using the following forms, as appropriate: Form IL-843, Form IL-1040X and Form IL-1120X. These forms may also be used by taxpayers to claim additional interest where there is a dispute regarding the amount of interest that is due from the Department relative to a refund. Such claims for additional interest must be filed either within the 60-day protest period for claim denials (see IITA Section 910) or within the limitations period for filing claims for refund for the taxable year for which the interest is due (see IITA Section 911). See 86 Ill. Adm. Code 200.120 for procedure on protest. An "informal claim", such as a letter from the taxpayer, is insufficient for the purpose of establishing or extending any of the limitations in IITA Section 911 or in subsections (g) and (h) of this section.
- g) Notices of refund or denial.
- 1) In general. The Department shall examine a claim for refund, in connection as appropriate with the return for the taxable year to which it relates, as soon as practicable after it is filed to determine the correct amount of tax and the amount of any refundable overpayment to which the claimant-taxpayer may be entitled. If for the taxable year involved the Department finds the claimant entitled to a refund in any amount, it shall issue an appropriate notice of refund, abatement, or credit (see paragraph (b)). If the Department has failed to approve or deny the claim before the expiration of 6 months from the date the claim was filed, the claimant may nevertheless thereafter file with the Department a written protest addressed in accordance with the instructions in the applicable claim form (IL-1040-X, IL-1120-X, or IL-843). If a protest is filed, the Department shall consider the claim and, if the taxpayer has so requested, shall grant the taxpayer or the taxpayer's authorized representative a hearing within 6 months after the date such request is filed.
 - 2) Notice of denial; notice of deficiency as denial. However, if the Department finds that the claim for refund is not allowable and proposes to issue a notice of denial or if taking into account the claim nevertheless finds adjustments which are a basis for proposing an increase in the amount of tax liability over that shown on the return, or decreasing it by an amount less than that claimed as refundable, the Department shall issue a notice of deficiency under IITA Section 904(c) (see 86 Ill. Adm. Code 100.9300(a)) or it shall issue a notice of denial or partial denial of the claim. In the event that a notice of deficiency is issued which indicates that the claim for refund was considered, such notice (of deficiency) shall constitute (concurrently) a notice of denial of the claim. Note that, in the absence of a written protest of the notice (of deficiency or denial) so issued (see 86 Ill. Adm. Code 200.120(b)), the Department's final action thereunder is not an administrative decision subject to judicial review (except as to jurisdictional

questions) under the provisions of the Administrative Review Act (see 86 Ill. Adm. Code 100.9600).

- h) Effect of denial. Denial of a claim becomes final 60 days thereafter (irrespective of whether the claimant is outside the United States) except to the extent (in whole or part) that the claimant in the meantime shall have filed a protest, as provided by IITA Section 910 (see 86 Ill. Adm. Code 200.120(b)), against the denial of amounts claimed as refundable. In the absence of a written protest of the denial of the claim for refund, the Department's final action thereunder is not an administrative decision subject to judicial review (except as to jurisdictional questions) under the provisions of the Code of Civil Procedure (see 86 Ill. Adm. Code 100.9600).
- i) Time for protest. If after a claim for refund is denied by issuance of a written notice of denial (see 86 Ill. Adm. Code 100.9400(g)(2)) a written protest against such denial is filed by the taxpayer within 60 days thereafter (irrespective of whether the taxpayer is outside the United States), the Department shall reconsider the denial and, if requested, shall grant the taxpayer or his authorized representative a hearing, as provided for in IITA Section 914. See 86 Ill. Adm. Code 200 for protest and hearing procedures.

(Source Amended at 29 Ill. Reg. _____, effective _____)